PATENTS 107051-0001C1

5 P 1	IN THE UNITED STATES PATE	ENT	TAND TRADEMARK OFFIC	E		
Whi .						
WY& TRI	The Application of: Zheng Wu et al.)	•			
	Serial No.: 10/051,820)	Examiner: Not yet assigne	₹ 6 ,286	APE	REC
	Filed: January 17, 2002)	Art Unit: 2855	JO MAI	MPR 29 2002	RECEIVED
	For: METHOD AND SYSTEM FOR AUTOMATIC WATER DISTRI- BUTION MODEL CALIBRATION))		2800 MAIL NO	. 000x	3
		ŕ	Cesari and McKenna, LLP 88 Black Falcon Avenue Boston, MA 02210 April 24, 2002			
	"Express Mail" Mailing-Label Number:	EL	RECEIVED	TECHNOLOGY CENTER 280	SEP	RE
	Honorable Assistant Commissioner for Pate	nts	SEP 1 8 2002	OGY CE	9-	RECEIVED
	Washington, D.C. 20231		Technology Center 2100	HTER :	2002	/ED
	Sir:			2800		

SUPPLEMENTAL INFORMATION-DISCLOSURE STATEMENT

In keeping with the duty of candor and good faith owed to the Patent and Trademark Office, Applicants wish to bring to the Examiner's attention the references listed on the accompanying form PTO-1449. A copy of each listed reference is enclosed.

PATENTS 107051-0001C1

Please charge any additional fee occasioned by this paper to our Deposit Account No. 03-1237.

Respectfully submitted,

Rita M. Rooney

Reg. No. 30,585

CESARI AND MCKENNA, LLP

88 Black Falcon Avenue Boston, MA 02210-2414

(617) 951-2500

remedies is an affirmative defense. "The Court is not precluded, however, from considering at the outset whether an inmate has exhausted administrative remedies." <u>Green v. Rubenstein</u>, 644 F. Supp. 2d 723, 742 (S.D. W. Va. 2009). The Fourth Circuit stated in <u>Anderson</u>, 407 F.3d at 683, as follows:

[A]n inmate's failure to exhaust administrative remedies is an affirmative defense to be pleaded and proven by the defendant. That exhaustion is an affirmative defense, however, does not preclude the district court from dismissing a complaint where the failure to exhaust is apparent from the face of the complaint, nor does it preclude the district court from inquiring on its own motion into whether the inmate exhausted all administrative remedies.

III. DISCUSSION

Here, on the face of the Complaint and by Plaintiff's own assertions, Plaintiff did not exhaust her administrative remedies before bringing this lawsuit. In the section of her Complaint regarding exhaustion of administrative remedies, Plaintiff concedes that she did not exhaust her administrative remedies. (Doc. No. 1 at 4). Furthermore, in her administrative remedy statement, Plaintiff asserts that she did not exhaust her administrative remedies because the action arose at the Burke-Catawba District Confinement Facility, and she is now housed at the North Carolina Correctional Institution for Women. (Doc. No. 5 at 1). In sum, Plaintiff's claims must be dismissed for failure to exhaust administrative remedies.¹

IV. CONCLUSION

Plaintiff's Complaint will be dismissed without prejudice for failure to exhaust administrative remedies.

IT IS THEREFORE ORDERED that:

(1) Plaintiff's action is **DISMISSED** without prejudice for failure to exhaust administrative remedies. The Clerk of Court is directed to close this case.

¹ The Court is very sympathetic to Plaintiff given her allegations. Furthermore, the Court acknowledges that exhaustion is not possible, given that Plaintiff has been transferred away from the prison from where the alleged sexual assault took place. Nevertheless, the Court is bound by the mandatory exhaustion rules in this case.